

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING**

DEQUANDA NICOLE PARKS,

Petitioner,

v.

**CIVIL ACTION NO. 5:20-CV-146
(BAILEY)**

WARDEN P. ADAMS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 5]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on July 21, 2020, wherein he recommends the Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] be denied and dismissed without prejudice to petitioner's right to file a *Bivens* action, and that the Motion to Proceed *in forma pauperis* [Doc. 2] be granted. For the reasons that follow, this Court will adopt the R&R.

I. BACKGROUND

The petition in this case alleges that the BOP is housing petitioner "in unsanitary, inhuman [sic] conditions." [Doc. 1 at 5]. Specifically, petitioner alleges that the water at Hazelton turned brown; that her toilet would not flush; that beginning June 19, 2020, there was no running water; and that there has been a lack of drinkable water. [Id]. Further, petitioner alleges that the BOP has failed to protect inmates against coronavirus. [Id. at 5–6]. For relief, petitioner asks this Court to order coronavirus testing, including

anti-body testing, and order the original contents of petitioner's mail be provided to petitioner. [Id. at 8].

On July 21, 2020, Magistrate Judge Mazzone issued his R&R. The magistrate judge found that the petitioner does not attack the execution of her sentence but instead complains about poor sanitary conditions and failure to be tested for coronavirus. [Doc. 5 at 3]. Because such claims relate only to the conditions of petitioner's confinement, the magistrate judge found that they should have been brought as a civil rights complaint. [Id.]. Accordingly, the R&R recommends the petition be dismissed without prejudice as to petitioner's right to file a *Bivens* action. [Id.].

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than

those drafted by licensed attorneys, however, courts are not required to create objections where none exist. **Haines v. Kerner**, 404 U.S. 519, 520 (1972); **Gordon v. Leeke**, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. The petitioner timely filed her Objections to the R&R [Doc. 8] on August 6, 2020. Accordingly, this Court will review the portions of the R&R to which objection was filed under a *de novo* standard of review. The remainder of the R&R will be reviewed for clear error.

III. DISCUSSION

Petitions under 28 U.S.C. § 2241 may be filed to attack the fact or length of a petitioner's confinement, but generally not the conditions of that confinement. See **Preiser v. Rodriguez**, 411 U.S. 475, 499, 93 S.Ct. 1827, 36 (1973). The Supreme Court has further held that a habeas petition is appropriate when "success in [the] action would necessarily demonstrate the invalidity of confinement or its duration." **Wilkinson v. Dotson**, 544 U.S. 74, 82 125 S.Ct. 1241 (2005). As stated above, the Magistrate Judge found that petitioner's claims should have been properly brought under a civil rights complaint, not a § 2241 petition. The sole objection petitioner raises is to assert the urgency of this matter: "[p]etitioner objects to this court's withdrawal and/or oversight of this matter as this is a dire emergency as the issues presented regarding the water has [sic] gone unaddressed." [Doc. 8 at 1]. While this matter may be urgent, this Court agrees with the Magistrate Judge that a § 2241 is not the appropriate remedy in this case. Accordingly, petitioner's objection is overruled.

IV. CONCLUSION

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 5]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the petitioner's objections **[Doc. 8]** are **OVERRULED**. This Court **ORDERS** that the § 2241 petition **[Doc. 1]** be **DENIED** and **DISMISSED WITHOUT PREJUDICE** as to petitioner's right to file a *Bivens* action. The Motion to Proceed *in forma pauperis* **[Doc. 2]** is hereby **GRANTED**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: August 19, 2020.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE